

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1898-02
Bill No.: SB 491
Subject: Attorneys; Civil Rights; Courts; Higher Education; General Insurance; State Departments; State Employees
Type: Original
Date: April 2, 2007

Bill Summary: The proposal provides certain requirements before the state or any of its entities may enter into settlement or consent agreements.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	(More than \$173,121)	(More than \$185,435)	(More than \$187,999)
Total Estimated Net Effect on General Revenue Fund	(More than \$173,121)	(More than \$185,435)	(More than \$187,999)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Highway	(Unknown)	(Unknown)	(Unknown)
Workers' Compensation	(Unknown)	(Unknown)	(Unknown)
Conservation	(Unknown)	(Unknown)	(Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown)	(Unknown)	(Unknown)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
General Revenue	1	1	1
Total Estimated Net Effect on FTE	1	1	1

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2008	FY 2009	FY 2010
Local Government	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Agriculture, Coordinating Board for Higher Education, Office of Administration – Administrative Hearing Commission, – Division of Budget and Planning, Department of Insurance, Financial Institutions, and Professional Registration, Department of Natural Resources, Department of Corrections, Department of Revenue, Department of Public Safety – Director’s Office, Missouri Ethics Commission, Missouri House of Representatives, Office of the Lieutenant Governor, Office of Prosecution Services, Missouri Senate, Office of the State Public Defender, State Treasurer’s Office, Linn State Technical College, Kansas City Metropolitan Community College, City of Centralia, and St. Louis County** assume the proposal would have no fiscal impact on their agencies.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

Officials from the **Office of the Attorney General (AGO)** state this proposal appears to limit the state’s ability to enter into settlement agreements in cases where the plaintiff has claimed that his or her civil or constitutional rights have been violated. In those types of cases, the AGO would be required, prior to entering into a settlement, to provide a written opinion that there is no foreseeable circumstance in which the agreement, order, or decree could possibly infringe on any constitutional or civil right of any employee of the state.

While the number of cases that could trigger this provision is unknown, AGO anticipates they will require additional resources to handle the settlement issues and inform the employees of the agency of their rights to provide input into the terms of the settlement.

Moreover, this proposal provides a right for employees to intervene if they object to the terms of the settlement. In that event, the employees are to be provided an attorney, presumably at the state’s expense.

As a result of the above factors, AGO assumes that the costs of this proposal are unknown and may exceed \$100,000 per fiscal year.

ASSUMPTION (continued)

Officials from the **Department of Economic Development – Public Service Commission (PSC)** state the PSC staff frequently enters into settlements with parties to administrative and other actions. Few if any of those directly implicate civil rights; however, the degree of certainty required by the proposed legislation is such that a more detailed and specialized legal analysis will be required. PSC assumes the need for an additional FTE Senior Counsel (at \$52,030 per year). PSC estimates the cost to be approximately \$73,000 in F7 08 and \$88,000 in subsequent years.

Officials from the **Department of Elementary and Secondary Education (DESE)** assume the circumstances under which this proposal would impact DESE are extremely rare. DESE cannot estimate a fiscal impact.

Officials from the **Department of Transportation (MoDOT)** assume the proposal will likely limit MoDOT's ability to enter into settlement agreements. MoDOT is unable to estimate the amount of fiscal impact; therefore, MoDOT assumes an unknown cost to the highway fund.

Officials from the **Department of Mental Health (DMH)** assume although very few of the DMH's employee related cases ever raise constitutional issues, it does occur on occasion. If the DMH could not enter into such an agreement and had to go through the process outlined in the legislation, it is possible that the DMH and objecting employees may not be able to reach an agreement. Aside from just the cost of proceeding with litigation, if the case proceeded to trial and the DMH lost, the judgment, which may include attorney fees, could be great.

The proposal uses claims of a person rather than employee, suggests that the legislation may intend to also include lawsuits from non-employees that may impact employee rights. It is difficult to envision such a suit, but the result would be the same if the DMH had to engage in the outlined process and could not reach an agreement with the objecting person.

DMH assumes the fiscal impact would be \$0 to unknown greater than \$100,000. The unknown costs at this time relate to not knowing how many cases may be impacted. If a settlement were possible but the case had to proceed to trial because the DMH and objecting employees could not reach an agreement, then the potential for high legal expenses exists.

Officials from the **Department of Health and Senior Services (DHSS)** assume it is undeterminable how often a settlement offer would need to be reviewed by an attorney as well as how much the attorney's fees would be; therefore, the cost of the legislation to DHSS is unknown.

ASSUMPTION (continued)

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume the frequency of suits and the potential cost is unknown. DOLIR officials assume if the department would become involved in such a controversy, there would be significant cost.

Officials from the **Department of Social Services – Division of Human Resources** assume the proposal has the potential for not only increased litigation through the loss of negotiated waivers, but also expanded litigation in the form of multiparty lawsuits. While there would be the potential for a great deal of costs, because of the nature of those costs, it is impossible to calculate a dollar figure.

Officials from the **Department of Social Services – Division of Legal Services** assume the fiscal impact of this legislation is unknown, as it is unknown how many lawsuits would result in the hiring of an attorney for the employees, and how much outside counsel would cost.

Officials from the **Missouri Consolidated Health Care Plan (MCHCP)** assume the costs associated with this bill are currently unknown since it cannot be predicted if a future lawsuit would regard civil or constitutional rights. Historically, this has not been the case with MCHCP and, therefore, the cost is assumed to be less than \$10,000. However, should a future lawsuit regard this issue the cost would be significantly more than this amount.

Officials from the **Department of Conservation (MDC)** assume the fiscal impact of this proposed legislation on MDC funds is unknown. The proposed legislation provides that certain requirements be met before state agencies may enter into settlement or consent agreements, or consent orders. Under certain circumstances, the state agency would be required to provide an attorney to represent the interests of other parties. The legal fees that might be incurred is speculative.

Officials from the **State Auditor's Office** assume the fiscal impact of the legislation is unknown. Officials are relying upon the Office of the Attorney General to respond regarding the statewide impact of this legislation.

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State** assume local library districts currently acquire both errors and omissions insurance, and liability insurance for their units and their board members. This bill would result in increases to both of those types of insurance. Since the bill in most cases would require the library district to supply an attorney for any employee objecting to any settlement for any perceived civil or constitutional reason, the bill could result in substantial estimated attorney fees, particularly for library districts with many employees. This would greatly increase insurance costs for the library districts, and would have an impact on funds available to provide library services. Smaller library districts would likely drop their coverage, leaving both the library and library board exposed to other liabilities.

Officials from **Lincoln University (LU)** state the bill allows a student or employee to stop LU from settling a claim unless the attorney gives an opinion that the settlement could not foreseeably result in an infringement of the civil rights of a student or employee in the future. Officials did not provide an estimate of fiscal impact.

Officials from the **University of Central Missouri** state there are few situations where there is no foreseeable circumstance in which an agreement, order, or decree could possibly be viewed as infringing on any constitutional or civil right of any employee. As a result, institutional legal costs will increase dramatically by bringing in outside counsel to represent employees who have no governance responsibilities in a governance decision.

Officials from the **City of Kansas City (CKC)** assume they could incur significant costs depending upon the number of cases qualifying for treatment under this bill. The bill imposes a duty on the City to provide an additional legal work product not now required, and requires the City to provide, in some instances, an attorney for employees. Furthermore, the bill can increase the costs to the City of defense of an action by eliminating the ability to enter into prudent settlements of actions against the City.

Officials from the **St. Charles City – County Library District** responded to Oversight's request but issued no fiscal impact statement.

<u>FISCAL IMPACT - State Government</u>	FY 2008 (10 Mo.)	FY 2009	FY 2010
GENERAL REVENUE FUND			
<u>Costs</u> – Department of Economic Development – Public Service Comm			
Personal Service	(\$44,659)	(\$55,199)	(\$56,855)
Fringe Benefits	(\$20,213)	(\$24,983)	(\$25,733)
Equipment and Expense	(\$8,249)	(\$5,253)	(\$5,411)
<u>Total Costs</u> – PSC	(\$73,121)	(\$85,435)	(\$87,999)
FTE Change – PSC	1 FTE	1 FTE	1 FTE
 <u>Costs</u> – Various state agencies			
Increased legal costs	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>
 ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
	<u>(More than \$173,121)</u>	<u>(More than \$185,435)</u>	<u>(More than \$187,999)</u>
 Estimated Net FTE Change for General Revenue Fund			
	1 FTE	1 FTE	1 FTE
 HIGHWAY FUND			
<u>Costs</u> – Department of Transportation			
Increased legal costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
 ESTIMATED NET EFFECT ON HIGHWAY FUND			
	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2008 (10 Mo.)	FY 2009	FY 2010
WORKERS' COMPENSATION FUND			
<u>Costs</u> – Department of Labor and Industrial Relations			
Increased legal costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON WORKERS' COMPENSATION FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
CONSERVATION FUND			
<u>Costs</u> – Department of Conservation			
Increased legal costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON CONSERVATION FUND	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
 <u>FISCAL IMPACT - Local Government</u>			
	FY 2008 (10 Mo.)	FY 2009	FY 2010
POLITICAL SUBDIVISIONS			
<u>Costs</u> – Local library districts			
Increased legal costs	(More than \$100,000)	(More than \$100,000)	(More than \$100,000)
<u>Costs</u> – Cities			
Increased legal costs	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON POLITICAL SUBDIVISIONS	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>	<u>(More than \$100,000)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

The proposed legislation provides that where the state, any of its agencies, or any of its political subdivisions is a party to a legal action in which there are allegations that a person's civil or constitutional rights have been violated, such entities are prohibited from entering into a settlement agreement, consent agreement, or consent order unless the attorney for the entity provides a written opinion stating that there is no foreseeable way in which the agreement or order could infringe on employees' civil or constitutional rights. If the attorney declines to provide such an opinion, the state or entity may only enter into such an agreement or order if the employees are sent notice of the terms of any proposed agreement or order and of their right to object, which allows them specific time in which to respond, and which notifies them that an attorney will be provided by the state or entity to represent the interests of all objecting employees. These provisions are also applicable to students at an educational institution.

The proposal also provides that upon receipt of objections from one or more employees or students, the state, agency, or political subdivision shall permit the attorney or representative to participate in negotiation of the terms of any settlement agreement, consent order, or consent decree. If the state, agency, or subdivision come to an agreement on a proposed settlement agreement, consent order, or consent decree, then it may enter into such agreement or order as modified to protect the rights of the students or employees. Also, if the objecting employees or students are unable to reach an agreement with the state, agency, or subdivision, and other parties to the proceeding, then these entities shall not enter into such an agreement, order or decree. In such a case, the objecting students or employees may file a motion to intervene in the proceeding, and the court shall allow such intervention.

The proposal also provides that if the state or entity is being provided defense by an insurance company, such company shall pay the costs and fees for the employees' attorney, and all policies issued after the effective date shall provide coverage for such attorneys.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Department of Agriculture
Coordinating Board for Higher Education
Office of Administration

- Administrative Hearing Commission
- Division of Budget and Planning

Office of State Courts Administrator
Department of Economic Development

- Public Service Commission

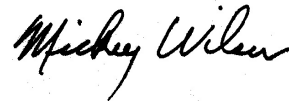
Department of Elementary and Secondary Education
Department of Transportation
Department of Insurance, Financial Institutions, and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety

- Director's Office

Missouri Consolidated Health Care Plan
Department of Conservation
Missouri Ethics Commission
Missouri House of Representatives
Office of the Lieutenant Governor
Office of Prosecution Services
State Auditor's Office
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
State Treasurer's Office

SOURCES OF INFORMATION (continued)

Lincoln University
Linn State Technical College
Kansas City Metropolitan Community College
University of Central Missouri
University of Missouri
City of Centralia
City of Kansas City
St. Louis County
St. Charles City – County Library District



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